



FOR CLERK USE ONLY
 City Council
 Item No. 15

CITY COUNCIL AGENDA FACT SHEET

Administration

April 20 2010

Department

Requested Date

1. Request:

Council Approval

☒Information Only/
Presentation☐

Other (specify)

☐

Hearing

☐**2. Requested Action:**

Adopt resolution to inform the citizenry that state law prohibits charging prices for goods and services above a certain specified percentage in times of declared emergencies.

3. Fiscal Impact:

Revenue:

Increase

☐

Source:

Decrease

☐

Amount:

Cost:

Increase

☐

Source:

Decrease

☐

Amount:

Does Not Apply ☒**4. Reviewed By:**

Finance Dept. on

By:

Comments:

City Attorney on

By:

Comments:

Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.

CLERK USE ONLY:

CITY COUNCIL DATE:

Action

☐

Filing

☐

Consent

☐

Presentation

☐

Hearing

☐

Other(specify)

☐

Reviewed by: City Clerk

City Manager

Date

Date

**CITY COUNCIL
AGENDA REPORT**

**SUBJECT: RESOLUTION RELATING TO UNFAIR BUSINESS PRACTICES
WITHIN THE CITY OF CALEXICO DURING AND SHORTLY AFTER THE
PROCLAMATION OF A STATE OF EMERGENCY**

AGENDA DATE: April 20, 2010

PREPARED BY: Jennifer Lyon, City Attorney

APPROVED FOR AGENDA BY: Victor Carrillo, City Manager

RECOMMENDATION: That the City Council approve the resolution to inform the citizenry that state law prohibits charging prices for goods and services above a certain specified percentage in times of declared emergencies,

BACKGROUND INFORMATION: On April 4, 2010, the City Manager, as Director of Emergency Services of the City of Calexico, and the City Council of the City of Calexico, proclaimed a state of emergency in the City of Calexico due to an earthquake of a magnitude of 7.2 commencing on or about 3:40 p.m. on the day of 4th day of April, 2010. On April 5, 2010, Imperial County and Governor Schwarzenegger declared a state of emergency in the Imperial Valley. On April 6, 2010, the City Council ratified the April 4th declarations. Said proclamations were made pursuant to California Government Code Sections 8558(b), 8625, and 8630. The earthquake has caused considerable damage and created conditions that risk the health and safety of the citizens of Calexico.

The aftereffects of the earthquake have created opportunities for unfair competition in pricing for certain goods and services in the local and regional economy. In the past, some merchants and suppliers have taken advantage of consumers by greatly increasing prices for essential consumer goods and services.

DISCUSSION: The City Council of the City of Calexico desires to protect persons affected by the emergency from unfair competition and opportunistic business practice resulting from excessive and unjustified increases in prices for vital goods, services, and accommodations charged during or shortly after a declared state of emergency.

Goods and Services:

Under California Penal Code ("PC") Section 396, for a period of thirty (30) days after a state of emergency is proclaimed (and longer if the local agency extends it – see below), persons, contractors, businesses, or other entities are prohibited from selling or offering to sell any consumer food items or goods, goods or services used for emergency cleanup, emergency

supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10 percent above the price charged by that person for those goods or services immediately prior to the proclamation of emergency.

Further, under PC Section 396, for a period of one hundred eighty (180) days after a state of emergency is proclaimed, a contractor is prohibited from selling or offering to sell any repair or reconstruction services or any services used in emergency cleanup for a price of more than 10 percent above the price charged by that person for those services immediately prior to the proclamation of emergency.

Accommodations:

Pursuant to California Business and Professions Code Section 17568.5, for a period of thirty (30) days following a proclamation declaring a state of emergency, an owner or operator of a hotel or motel may not increase the hotel or motel's regular rates, as advertised immediately prior to the proclamation or declaration of emergency, by more than 10 percent.

Penalties:

California Penal Code Section 396 provides criminal penalties for violating its provisions protecting consumers by controlling prices for vital goods during and after a declared state of emergency.

Violation of PC Section 396 is a misdemeanor punishable by imprisonment in a county jail for up to one year, a fine of up to ten thousand dollars (\$10,000), or both. Violations of either PC Section 396 or B&P Section 17568.5 are subject to penalties under B&P Section 17200, prohibiting illegal business practices and unfair competition. And any contractor who violates PC Section 396 relating to repair, cleanup or restoration services may have his or her license suspended pursuant to B&P Section 7123.5.

If any person feels this law has been violated and they have been taken advantage of during the existence of this emergency, it is recommended that they contact the Imperial County District Attorney's Office at (760) 482-4331.

[Note: these laws provide an exception for contractors, suppliers, and other businesses who are themselves charged higher rates for goods, services, materials, or labor. In that case, the sellers must prove that the increase was due to the increase in costs charged to them by others. In the case of proof, sellers may not charge more than 10 percent above the total costs to the seller plus the customary markup.]

Future Action:

The provisions of PC Section 396 may be extended by the City Council for additional 30-day periods if deemed necessary to protect the lives, property, or welfare of the citizens. If deemed necessary, a resolution will be prepared for the May 4th agenda to extend the effects of the State law.

RESOLUTION NO.

RESOLUTION RELATING TO UNFAIR BUSINESS PRACTICES WITHIN THE CITY OF CALEXICO DURING AND SHORTLY AFTER THE PROCLAMATION OF A STATE OF EMERGENCY

WHEREAS, the earthquake which occurred on April 4, 2010 having a magnitude of 7.2 has caused significant structural damage to buildings and public infrastructure, including the water and wastewater treatment plants in the City of Calexico, creating a threat to public health and safety; and

WHEREAS, Government Code section 8630 and Calexico Municipal Code (CMC) section 2.36.060 empower the City Manager, acting as the Director of Emergency Services, to proclaim the existence of a local emergency when the City is affected by a public calamity, and the City Council is not in session; and

WHEREAS, on April 4, 2010, the City Manager, the City Council, and the City's Disaster Council, acting pursuant to Government Code section 8630 and CMC section 2.36.060, proclaimed the existence of a local emergency based on conditions of extreme peril to the safety of persons and property caused by the earthquake; and

WHEREAS, the City Council is required by Government Code section 8630 and CMC section 2.36.060 to ratify the existence of a local emergency within seven (7) days of a Proclamation of Local Emergency by the City Manager, and the City Council ratified the local emergency on April 6, 2010; and

WHEREAS, the City has suffered major public infrastructure and private property damage which will require immediate and necessary repairs to protect the public health, safety, and welfare and the City continues to experience significant aftershock earthquakes that can continue to damage the infrastructure; and

WHEREAS, California Penal Code section 396 makes it unlawful for persons, businesses, contractors, etc to charge more than 10 percent above the prices charged prior to the proclamation of a state of emergency, and Business and Professions Code section 17568 prohibits hotels and motels from charging rates higher than 10 percent above the rate advertised prior to the proclamation.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Calexico hereby finds and declares:

1. A continuing emergency exists within the City as of April 4, 2010 as the result of earthquake damage to various public facilities.
2. The continuing threat of the earthquake, aftershocks, and resulting damage requires that the City be able to expend public money and private citizens expend money to repair and protect damaged facilities in order to safeguard life, health, or property.

3. That the public shall hereafter be informed that Penal Code section 396 prohibits suppliers of goods and services, businesses, contractors and any other entity, from selling consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels following the proclamation of an emergency, and further prohibits contractors from selling any repair or reconstruction services or any services used in emergency cleanup for a price higher than 10 percent above the price charged by that person for those goods or services immediately prior to the proclamation of an emergency, for a period of 180 days. California Business and Professions Code section 17568.2 further provides that a hotel or motel may not increase the hotel or motel's regular rates, as advertised immediately prior to the proclamation or declaration of emergency, by more than 10 percent, for a period of 30 days following the proclamation of an emergency, and that any violations of this law shall be reported to local authorities for investigation and possible prosecution.

PASSED, ADOPTED, AND APPROVED by the City Council of the City of Calexico, California, at a regular meeting thereof, this 20th day of April 2010.

David B. Ouzan, Mayor

ATTEST:

Lourdes Cordova, City Clerk

Approved as to Form:

Jennifer M. Lyon, City Attorney

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL)
CITY OF CALEXICO)

I, Lourdes Cordova, City Clerk of the City of Calexico, do hereby certify under penalty of perjury that the foregoing Resolution No. 10- was duly adopted by the City Council at a meeting of said City Council held on the 20th day of April 2010, and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

Lourdes Cordova, City Clerk
City of Calexico